IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 388 of 2000()

CRA.204/1998 of SESSIONS COURT, THRISSUR
CC.250/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER:

SAROJINI, D/O. THALAKKAT SANKARAN MUTHAVATTOOR DESOM, GURUVAYOOR AMSOM, CHAVAKKAD TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SMT.MINI JOHN PAREMALIL

RESPONDENTS:

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1. A.K.KUMARAN, ATHIRINGAL HOUSE, THAMARAYOOR.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.D.ANIL KUMAR
PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON 29/11/2007 PASSED THE FOLLOWING:

A.K. Basheer, J.

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Crl.R.P.No. 388 of 2000

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Dated this the 29th day of November, 2007.

ORDER

Petitioner who has been concurrently found guilty under Section 138 of the Negotiable Instruments Act by the trial court as well as the appellate court, has preferred this revision petition.

2. The case in brief of respondent No.1/complainant was that the petitioner/accused had borrowed a sum of Rs.70,000/- from him and issued Ext.P1 cheque in discharge of the said liability. When the cheque was presented for encashment, it was dishonoured. Though a statutory notice was issued the accused had not bothered to discharge the liability nor had she sent a reply to the same. Hence the complaint.

3. The complainant was examined as Pw.1 and Managers of the two banks were examined as Pws.2 and 3. Exts.P1 to P7 were also marked on the side of the complainant. Petitioner/accused got herself examined as Dw.1 and Ext.D2 was marked on her side. It is pertinent to note that petitioner had admitted her signature in Ext.P1 cheque. But she contended that she had borrowed only an amount of Rs.20,000/- from the complainant. At that time she had issued two signed blank cheques as security for repayment. According to her, one of the above two cheque leaves was misused by the complainant and an amount of Rs.40,000/- was claimed. That matter was settled between the parties. She further contended that the other cheque which was handed over to the complainant as security had

been misused by him.

4. The trial court had considered the oral and documentary evidence on record elaborately and found that the complainant had satisfactorily established his case. The trial court accordingly found the petitioner guilty under Section 138 of the Act and convicted and sentenced her to undergo Simple Imprisonment for 6 months and to pay a sum of Rs.70,000/- as compensation to the complainant under Section 357(3) of the Code of Criminal Procedure. She was further directed to undergo Simple Imprisonment for 6 months if she failed to pay the compensation.

5. In appeal, the order of conviction was confirmed. But the learned Sessions Judge modified the sentence and directed the petitioner to undergo imprisonment till the rising of the court and to pay a sum of Rs.75,000/- as compensation and in default to undergo Simple Imprisonment for a period of 3 months. It was further directed that on realisation of the amount from the accused, a sum of Rs.72,000/- shall be paid to the complainant as compensation.

6. Learned counsel for the petitioner has taken me through the deposition of the parties and also the other materials on record. As noticed by the courts below, the petitioner had totally failed in discharging the burden under Section 139 of the Act. Though she had taken up a defence that she had borrowed only a sum of Rs. 20,000/- from the complainant and issued two blank cheques, she had not succeeded in substantiating the above contention.

7. Having heard learned counsel for the parties and having perused the materials on record, I do not find any reason to interfere

with the concurrent finding entered by the courts below. In my view, the complainant had proved his case satisfactorily and therefore the revision petition is liable to be dismissed.

8. At this stage learned counsel for the petitioner submits that the petitioner is prepared to pay the amount of compensation as directed by the appellate court. She only prays for some reasonable time to make the payment. It is brought to my notice that the petitioner is in her early 70's.

9. Having regard to the entire facts and circumstances I am satisfied that the prayer made on behalf of the petitioner can be allowed. Therefore while confirming the order of conviction and sentence imposed on the petitioner, it is made clear that it will be open to the petitioner to appear before the trial court and remit the amount of compensationt. For this purpose petitioner is granted time till March 28, 2008.

The petitioner shall appear before the trial court and remit the sum of Rs.75,000/- as directed by the appellate court on or before March 28, 2008. The learned Magistrate shall ensure that petitioner undergoes imprisonment till the rising of the court on the date of her appearance. On remittance of the amount, a sum of Rs.72,000/- shall be released to the complainant. If the petitioner fails to comply with the above direction, the learned Magistrate shall ensure that the sentence imposed by the appellate court is executed forthwith.

A.K. Basheer

an. Judge.